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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:



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1 KENNETH G. PARKER (SBN 182911)

kparker@tlpfirm.com

2 ROBERT G. LOEWY (SBN 179868)

rloewy@tlpfirm.com

3 TEUTON, LOEWY & PARKER LLP

3121 Michelson Drive, Suite 250

4 Irvine, California 92612

5 Telephone: (949) 442-7100

Facsimile: (949) 442-7105

6 THOMAS F.A. HETHERINGTON\*

tom.hetherington@emhllp.com

7 JARRETT E. GANER\*

jarrett.ganer@emhllp.com

8 EDISON, MCDOWELL &

9 HETHERINGTON LLP

3200 Southwest Freeway, Suite 2920

10 Houston, Texas 77027

11 Telephone: (713) 337-5580

Facsimile: (713) 337-8850

12 \* *pro hac vice* motion to be filed

13 Attorneys for

14 PHL VARIABLE INSURANCE CO.

15 UNITED STATES DISTRICT COURT

16 SOUTHERN DISTRICT OF CALIFORNIA

17 PHL VARIABLE INSURANCE CO.,

18 Plaintiff,

19 v.

20 CLIFTON WRIGHT FAMILY  
21 INSURANCE TRUST, by and through  
22 its trustee, VINCENT M. GIORDANO

23 Defendant.

Case No.

PLAINTIFF PHL VARIABLE  
INSURANCE COMPANY'S  
ORIGINAL COMPLAINT

Action Filed:

COMPLAINT

1 PHL Variable Insurance Company, by and through its attorneys, files this  
2 Original Complaint against the Clifton Wright Family Insurance Trust by and  
3 through its Trustee, Vincent M. Giordano as follows:

4 **I.**

5 **PARTIES**

6 1. Plaintiff PHL Variable Insurance Company ("Phoenix") is a  
7 Connecticut insurance company authorized to transact the business of insurance in  
8 California. Phoenix is a citizen of Connecticut within the meaning and intent of 28  
9 U.S.C. § 1332.

10 2. Defendant, the Clifton Wright Family Insurance Trust ("Trust"), is a  
11 trust organized under the laws of California and is a citizen of California within the  
12 meaning and intent of 28 U.S.C. § 1332. The Trust may be served through its  
13 Trustee, Vincent M. Giordano ("Trustee"), at his home address, 12350 Lemon  
14 Crest Dr., Lakeside, California 92040. On information and belief, Trustee  
15 Giordano is the only trustee and is a resident of California.

16 **II.**

17 **JURISDICTION AND VENUE**

18 3. This Court has jurisdiction over all parties of this lawsuit under 28  
19 U.S.C. § 1332(a)(1) because Phoenix and Defendant are citizens of different states,  
20 and the amount in controversy exceeds \$75,000, exclusive of attorneys' fees,  
21 interests and costs. Defendant is subject to the personal jurisdiction of this Court.

22 4. This Court has jurisdiction for the declaratory judgment action  
23 pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. §§ 2201 and 2202, which grant the  
24 United States District Courts jurisdiction to declare the "rights and other legal  
25 relations of any interested party making such declaration, whether or not further  
26 relief is or could be sought."  
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## FACTUAL BACKGROUND

6. Phoenix is, and during all relevant times has been, in the business of underwriting and issuing policies of life insurance and is authorized to transact the business of insurance in the State of California

7. The Trust, by and through its Trustee, applied in writing to Phoenix seeking the issuance of an insurance policy, insuring the life of Clifton Wright (the "Application"). The Trust documents that were later provided to Phoenix indicated that the intended beneficiary of Wright's insurance trust was his "best friend," Janice Hom.

8. In completing this Application, Wright and the Trust provided Phoenix with material information regarding, among other things, Wright's net worth and annual income. Specifically, the Trust responded to clear, direct questions seeking material information regarding Wright's net worth and annual income. In response to these questions, the Application represented that Wright had a net worth of \$9,640,356 and annual unearned income of \$391,525. As discussed more fully in the ensuing paragraphs, these representations were false and were each material to Phoenix's acceptance of the risk assumed.

9. Additionally, during the application process, Wright and the Trust represented that the life insurance was being sought for “estate conservation.” This statement was false and was material to Phoenix’s acceptance of the risk assumed.

10. In completing the Application, Wright and the Trust knew that each was required to provide complete, accurate and honest answers to the questions presented on the Application. Wright and the Trust also knew that Phoenix would

1 rely upon the answers recorded on the Application in determining whether Wright  
2 was insurable and qualified for the insurance sought through the Application.

3 11. The Application contained the following affirmation:

4 I have reviewed this application and the statements made  
5 herein are those of the proposed insured and all such  
6 statements made by the proposed insured in Part I or and  
7 in Part II of this application are full, complete, and true to  
the best knowledge and belief of the undersigned and  
have been correctly recorded.

8 Wright and the Trust, through its trustee at the time, executed the Application on  
9 September 25, 2007.

10 12. On the basis of the statements and representations on the Application  
11 and in reliance upon Wright's and the Trust's complete candor, honesty and  
12 openness in disclosing information in the response to the questions presented on  
13 the Application, Phoenix issued life insurance policy number 97524655 (the  
14 "Policy") to the Trust, with an effective date of October 22, 2007. The Policy's  
15 death benefit is \$6,000,000.

16 13. After some suspicion was raised concerning Wright's actual financial  
17 worth, Phoenix requested documents from Wright, the Trustee, and the insurance  
18 agent who sold the Policy in order to substantiate the financial representations as  
19 true and correct. In response to these requests, the only documents that Phoenix  
20 received was a copy of the trust agreement and a one page document reiterating the  
21 financial assertions made in the Application. In addition, Phoenix's own  
22 independent investigation did not reveal any basis on which a person could  
23 reasonable conclude that Wright had a net worth of \$9,640,356 and annual  
24 unearned income of \$391,525 on the date of the Application. Phoenix asserts that  
25 the statements made during the application process with respect to Wright's net  
26 worth, annual income, source of funding and purpose for the life insurance were  
27 each materially incorrect and/or fraudulent.  
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1 issuance and subsequent investigation, including attorneys' fees and  
2 expenses;


3 (d) An order awarding cost of suit and reasonable attorneys' fees pursuant  
4 to the Federal Declaratory Judgment Statute; and

5 (e) An order awarding such other relief as the Court deems equitable and  
6 just to Phoenix.

7 Dated: October 21, 2009

TEUTON, LOEWY & PARKER LLP  
ROBERT G. LOEWY  
KENNETH G. PARKER

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9  
10 By:

  
Kenneth G. Parker  
Attorneys for Plaintiff  
PHL VARIABLE INSURANCE CO.

11  
12  
13 OF COUNSEL:

14 EDISON, MCDOWELL & HETHERINGTON LLP  
15 Thomas F.A. Hetherington, Texas Bar No. 24007359  
Jarrett E. Ganer, Texas Bar No. 24055520  
16 Phoenix Tower  
3200 Southwest Freeway, Suite 2920  
Houston, Texas 77027  
17 (713) 337-5580 (Telephone)  
(713) 337-8850 (Facsimile)  
18 E-mail: tom.hetherington@emhllp.com  
E-mail: jarrett.ganer@emhllp.com  
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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

PHL VARIABLE INSURANCE CO.

(b) County of Residence of First Listed Plaintiff Connecticut  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kenneth G. Parker, Esq., Teuton, Loewy & Parker LLP  
3121 Michelson Dr. #250, Irvine, CA 92612; 949/442-7100

## DEFENDANTS.

CLIFTON WRIGHT FAMILY INSURANCE TRUST, by and through its trustee VINCENT M. GIORDANO

County of Residence of First Listed Defendant California

CLERK, U.S. DISTRICT COURT (For Diversity Cases Only)  
NOTED IN U.S. DISTRICT OF CALIFORNIA  
LAND INVOLVED.

Attorneys (If Known)

09 CV 2344 BTM POR

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |  |   |   |
|---|--|---|---|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 DEF <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2         | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5         |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3                    | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6         |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

Declaratory Judgment - Rescission due to material misrepresentations

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/21/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

6551

AMOUNT

350.00

APPLYING IFP

JUDGE

MAG. JUDGE

OR MS 10/24/09

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS006551  
Cashier ID: msweeney  
Transaction Date: 10/21/2009  
Payer Name: NORCO DELIVERY SVCS

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CIVIL FILING FEE

For: PHL INS V CLIFTON WRIGHT TRUST  
Case/Party: D-CAS-3-09-CV-002344-001  
Amount: \$350.00

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CHECK

Check/Money Order Num: 20549  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.